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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 19 and 109

[Docket ID OCC-2018-0001]

RIN 1557-AE14

**Rules of Practice and Procedure;
Rules of Practice and Procedure in Adjudicatory Proceedings;
Civil Money Penalty Inflation Adjustments**

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure for national banks and its rules of practice and procedure in adjudicatory proceedings for Federal savings associations to remove the chart listing the maximum dollar amount of civil money penalties the OCC has authority to assess.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kevin Korzeniewski, Counsel, Legislative and Regulatory Activities Division, (202) 649-5490, or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Adjustment Act),¹ as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Adjustment Act),² requires Federal agencies to adjust the amount of their civil money penalties (CMPs)³ for inflation by January 15 of each year, and requires the Office of Management and Budget (OMB) to issue guidance to Federal agencies not later than December 15 of each year, on implementing the required inflation adjustments.

On January 27, 2017, the OCC published a final rule amending its rules of practice and procedure for national banks and its rules of practice and procedure in adjudicatory proceedings for Federal savings associations to adjust the maximum amount of each CMP within its jurisdiction to administer for inflation.⁴ The final rule also changed the method for making subsequent inflation adjustments, consistent with the 2015 Adjustment Act and OMB guidance.⁵ Specifically, sections 19.240(a) and 109.103(c)(1) of the rule codified the formula for making inflation adjustments for national banks and Federal savings associations, respectively. Sections 19.240(b) and

¹ Pub. L. 101-410, Oct. 5, 1990, 104 Stat. 890, codified at 28 U.S.C. 2461 note.

² Pub. L. 114-74, Title VII, section 701(b), Nov. 2, 2015, 129 Stat. 599, codified at 28 U.S.C. 2461 note.

³ The 2015 Adjustment Act defined a “civil monetary penalty” to mean “any penalty, fine, or other sanction that is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law; and is assessed or enforced by an agency pursuant to Federal law; and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.” 28 U.S.C. 2461 note, section 3(2). Thus, a penalty based on another measure, such as a percentage of total assets, need not be adjusted.

⁴ 82 FR 8584 (January 27, 2017).

⁵ See OMB Memorandum M-18-03, “Implementation of the 2018 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,” at 4, which permits agencies that have codified the formula to adjust CMPs for inflation to update the penalties through a notice rather than a regulation.

109.103(c)(2) of the rule provided a chart of penalties applicable during 2017. Sections 19.240(c) and 109.103(c)(3) also provided that notice of the maximum penalties which may be assessed for calendar years after 2017 will be published as a notice in the **Federal Register** on an annual basis on or before January 15 of each calendar year.⁶

II. Description of the Final Rule

Because the OCC will annually publish the maximum amount of CMPs the agency has authority to assess through a notice in the **Federal Register**, the CMP amounts listed in the charts at 12 CFR 19.240(b) and 109.103(c)(2) are out of date. Therefore, in order to avoid any confusion, the OCC is deleting the charts in sections 19.240(b) and 109.103(c)(2). The OCC is also making technical and conforming amendments in sections 19.240 and 109.103(c) to delete references to those charts, while retaining a description of the formula used to make the inflation adjustments and information on how the OCC will publish notice of the adjustments going forward. A complete list of the maximum amount of CMPs that can be assessed by the OCC during the current calendar year for violations that occurred on or after November 2, 2015, is also being published today in the **Federal Register**.⁷

III. Regulatory Analysis

A. Administrative Procedure Act

⁶ To the extent an agency has codified a CMP amount in its regulations, the agency would need to update that amount by regulation. However, if an agency has codified the formula for making the CMP adjustments, then subsequent adjustments can be made solely by notice. See OMB Memorandum M-18-03, “Implementation of the 2018 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,” at 4.

⁷ Penalties assessed for violations occurring prior to November 2, 2015, will be subject to the maximum amounts set forth in the OCC’s regulations in effect prior to the enactment of the 2015 Adjustment Act.

The Administrative Procedure Act (APA) generally requires that an agency publish a general notice of proposed rulemaking in the Federal Register, unless an exception applies. In this case, the OCC finds an exception for good cause that a general notice of proposed rulemaking would be unnecessary, as the only changes in this final rule are technical amendments to remove outdated information regarding the OCC's maximum CMP amounts and update related cross-references.

B. Delayed Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994⁸ (RCDRIA) requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this final rule because the rule does not impose any additional reporting, disclosures, or other new requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that the agency determine the rule's impact on small entities and consider options to reduce any significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).⁹ Because the 2015 Adjustment Act specifically exempted agencies' annual

⁸ 12 U.S.C. 4802.

⁹ 5 U.S.C. 601(2).

adjustments from the requirements of the APA,¹⁰ the OCC is not issuing a general notice of proposed rulemaking. Therefore, the RFA does not apply to this final rule.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more, as adjusted for inflation, in any one year.¹¹ The Unfunded Mandates Reform Act only applies when an agency issues a general notice of proposed rulemaking. Because the OCC is not issuing a general notice of proposed rulemaking, this final rule is not subject to section 202 of the Unfunded Mandates Reform Act.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),¹² the OCC may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The final rule contains no information collection requirements under the PRA.

List of Subjects

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice,
Investigations, National banks, Penalties, Securities.

¹⁰ 28 U.S.C. 2461 note, section 4(b)(2) (“the head of an agency shall adjust civil money penalties and shall make the adjustment notwithstanding section 553 of title 5, United States Code”).

¹¹ 2 U.S.C. 1532.

¹² 44 U.S.C. 3501 et seq.

12 CFR Part 109

Administrative practice and procedure, Federal savings associations, Penalties.

Authority and Issuance

For the reasons set out in the preamble, parts 19 and 109 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

PART 19 – RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 93a, 164, 481, 504, 1817, 1818, 1820, 1831m, 1831o, 1832, 1884, 1972, 3102, 3108(a), 3110, 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78s, 78u, 78u-2, 78u-3, 78w, and 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

2. Section 19.240 is revised to read as follows:

§ 19.240 Inflation adjustments.

(a) Statutory formula to calculate inflation adjustments. The OCC is required by statute to annually adjust for inflation the maximum amount of each civil money penalty within its jurisdiction to administer. The inflation adjustment is calculated by multiplying the maximum dollar amount of the civil money penalty for the previous calendar year by the cost-of-living inflation adjustment multiplier provided annually by the Office of Management and Budget and rounding the total to the nearest dollar.

(b) Notice of inflation adjustments. The OCC will publish notice in the **Federal Register** of the maximum penalties which may be assessed on an annual basis on or before January 15 of each calendar year based on the formula in paragraph (a) of this

section, for penalties assessed on, or after, the date of publication of the most recent notice related to conduct occurring on, or after, November 2, 2015.

PART 109 – RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

3. The authority citation for part 109 is revised to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817, 1818, 1820(k), 1829(e), 1832, 1884, 1972, 3349, 4717, 5412(b)(2)(B); 15 U.S.C. 78(l), 78o-5, 78u-2, 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

4. Section 109.103 is amended by revising paragraph (c) to read as follows:

§ 109.103 Civil money penalties.

* * * * *

(c) Maximum amount of civil money penalties—(1) Statutory formula. The OCC is required by statute to annually adjust for inflation the maximum amount of each civil money penalty within its jurisdiction to administer. The inflation adjustment is calculated by multiplying the maximum dollar amount of the civil money penalty for the previous calendar year by the cost-of-living inflation adjustment multiplier provided annually by the Office of Management and Budget and rounding the total to the nearest dollar.

(2) Notice of inflation adjustments. The OCC will publish notice in the **Federal Register** of the maximum penalties which may be assessed on an annual basis on, or before, January 15 of each calendar year based on the formula in paragraph (a) of this section, for penalties assessed on, or after, the date of publication of the most recent notice related to conduct occurring on or after November 2, 2015.

Dated: January 9, 2018

Karen Solomon,

Acting Senior Deputy Comptroller and Chief Counsel,
Office of the Comptroller of the Currency.

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